

Serial No.: 09/774,351
Filed: January 30, 2001
Group Art Unit: 3616

REMARKS/ARGUMENTS

Claims

Claims 3, 4, 7, 8, 15, 16, 19-28, 31-36, 39, 40, 42-48 remain and are pending in this application.

Claims 3, 4, 7, 8, 15, 16, 19-28, 31-36, 39, 42-44 are currently amended. Claim 40 remains as previously presented. Claims 45-48 have been added. No new matter has been added.

Claims Objections

The Examiner has objected claim 42 because it was dependent on a cancelled claim. The informality has been corrected.

Claims Rejection - 35 USC § 112

Claims 4, 16 and 22 have been rejected for failing to point out and distinctly claim the subject matter which is regarded as the invention. The Examiner found that the recited limitation "the base plate" lacks sufficient antecedent basis. Also, the Examiner has assumed, for the purpose of the examination, that "the base plate" is actually "the static base plate". The Examiner was right in her assumption and claims 4, 16 and 22 have been corrected to now recite the limitation "the static base plate".

Claims 43 and 44 have been rejected for failing to point out and distinctly claim the subject matter which is regarded as the invention. More particularly, the Examiner has found that it is

Serial No.: 09/774,351
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Group Art Unit: 3616

unclear how the plate recited in claim 43 can be simultaneously statically mounted and pivotally mounted to the ski. However, contrary to claim 1 wherein there is a static base plate and a pivotally mounted top plate, in claim 43, there is only one plate that is pivotally mounted to the ski. In fact, claims 43 and 44 are claiming a different embodiment of the ski binding of the present invention.

Claims Rejection - 35 USC § 102

The Examiner has rejected claims 43 and 44 under 35 USC §102(b) as being anticipated by Pascal et al. (4,679,815).

In the present disclosure by the Applicant, we can clearly see that the toe holding means are pivotally attached to the plate but more precisely, on the plate (best seen in Figure 1A).

In Pascal et al., the toe holding means is pivotally connected to the plate but is attached on the ski, which is quite different from the Applicant's claimed invention. Thus, claim 43 has been amended to include the following limitation: "second pivot means to pivotally attach said toe holding means on said plate" (emphasis added).

The Examiner has rejected claim 44 as being anticipated by Pascal et al. because Pascal et al. disclose a heel holding means and a third pivot means (#24 or #26) to pivotally attach the heel holding means to the plate. Applicant traverses this rejection.

Third pivot means #24 or #26 of Pascal pivot around a horizontal

axis whereas in the Applicant's application, the third pivot means pivot around a vertical axis. Claim 44 has been amended to include this limitation. The amendment of claim 44 finds support in at least Figure 7.

Therefore, the Applicant respectfully submits that the currently amended claims 43 and 44 as well as newly presented claims 45-48 claim an invention which is not anticipated nor made obvious by Pascal et al.

Claims Rejection - 35 USC § 103

The Examiner has also rejected claims 3, 4, 7, 8, 15, 16, 19-28, 31-36, 39, 40 and 42 under 35 USC §103(a) as being unpatentable over Peyre (5,044,656) in view of Meiselman (5,636,455).

With regards to claims 3, 4, 15, 16, 22 and 39, the Examiner has suggested that it would have been obvious to one skilled in the art at the time of the invention to modify the ski binding disclosed by Peyre such that it comprises the toe holding means and pivotal attachment means disclosed by Meiselman. It should be noted that the pivotal attachment means disclosed by Meiselman pivot around a horizontal axis whereas in the Applicant's application, the toe holding means are pivotally attached to the top plate so that the toe holding means pivot around a vertical axis (best seen in Figure 7). Also, when it is said that the toe

release means can release when the toe holding means pivot, it is said in the sense of a safety release. The pivotal movement of the toe holding means occurs when a dangerous load is applied on the ski and thus on the leg of the user. The pivotal movement of the toe holding means is thus part of a safety release system. The Applicant thus submits amended claims 3 and 39 which include the limitation that the toe holding means pivot around a vertical axis, is NOT obvious over Meiselman.

As for the claim 15, we respectfully traverse the rejection of the examiner since Meiselman does not disclose a toe holding means translatable (see lines 51-57, column 2) connected to the top plate as the Applicant recites in claim 15. Claims 3 and 15 further include the limitation that the release means is a safety release means. Claims 4, 16 and 22 depend respectively on claims 3, 15 and 21 which have been amended to include the limitation that the toe holding means pivot around a vertical axis or translate.

Therefore, the Applicant respectfully submits that the currently amended claims 3, 4, 15, 16, 22 and 39 claim an invention which is not obvious over Peyre in view of Meiselman.

With regards to claims 7, 8, 19 and 20, the claims are being rejected since the examiner has taken the position that Peyre discloses "biasing means" comprising a first cam. The "biasing means" of Peyre allow for an upward tilting movement of the top plate (best seen in Figures 6 and 7 of Peyre) and are used to

prevent excessive loadings of the legs of the user. In the Applicant's application, the "biasing means" allow only pivotal/lateral movement of the top plate (best seen in Figure 7) and they are used to allow the release of the boot when excessive lateral force is applied on the boot and therefore to the leg of the user. The Applicant thus submits amended claims 7, 8, 19 and 20 which includes the limitation that the "biasing means" are more precisely "laterally pivoting biasing means".

In regards to claims 21 and 42, the Examiner rejects the claims as being obvious in view of Peyre. The pivotal connection of the heel holding means in Peyre pivots around a horizontal axis whereas in the Applicant's current application, the heel holding means in pivotally attached to the top plate is such a way that the heel holding means pivot around a vertical axis (best seen in Figure 7). Claims 21 and 42 have been amended to further add the limitation that the heel holding means is pivotally attached to the top plate so that the "heel holding means can pivot around a vertical axis".

In regards to claim 23, 24, 31 and 32, the claims are being rejected stating that Peyre discloses "biasing means" comprising a second cam. As for the rejection of claims 7, 8, 19 and 20, the "biasing means" of Peyre allow for an upward tilting movement of the top plate (best seen in Figures 6 and 7) and are used to prevent excessive loadings of the legs of the user. In the Applicant's application, the "biasing means" allow only pivotal/lateral movement of the top plate (best seen in Figure 7)

and they are used to allow the release of the boot when excessive lateral force is applied on the boot and therefore the leg of the user. The Applicant thus submits amended claims 23, 24, 31 and 32 which includes the limitation that the "biasing means" are more precisely "laterally pivoting biasing means" comprising a "laterally displacing cam".

In regards to claims 25, 26, 33 and 34, the Applicant believes that, as mentioned above, the cam system of Peyre allows for an upward tilting cooperation between the base plate and the top plate. The Applicant's cam system creates a pivotal cooperation between the base plate and the top plate. Thus, both systems are fundamentally different. Claims 25, 26, 33 and 34 have been amended to further include the limitation that the cooperation between both plates is pivotal in nature.

In regards to claims 27, 28, 35 and 36, they have also been rejected in view of Peyre. It is to be understood that the cam system of Peyre and the cam system of the Applicant have different structures and different uses. However, Applicant has amended claims 27, 28, 35 and 36 so that they now include the limitation that the cam followers travels "laterally" on the cam surface. It is to be noted that the traveling movement of the cam follower (#26) of Peyre is vertical and/or longitudinal in nature, not lateral.

Finally, in regards to claim 40, the claim is rejected as being obvious in view of the second pivot means (#23) disclosed

Serial No.: 09/774,351
Filed: January 30, 2001
Group Art Unit: 3616

by Peyre. In this case, the Applicant observes that the pivot means (#23) pointed by the Examiner is not a pivot means *per se*.

At best, it could be considered a pivot guide for the actual pivot mean (#33). Furthermore, it is obvious that the top plate of Peyre can only pivot around the single pivot point (#33) whereas the Applicant's top plate can pivot around two pivot points (191 and 192). Thus, in this case, the Applicant traverses the rejection.

Therefore, the Applicant respectfully submits that the currently amended claims 7, 8, 19-21, 23-28, 31-36 and 42 and previously presented claim 40 claim an invention which is not obvious over Peyre.

In view of the above, applicant respectfully urges that all claims are in condition for allowance and requests that a timely Notice of Allowance be issued in this case. The Examiner is invited to telephone the undersigned, Applicant's attorney of record, to facilitate advancement of the present application.

REQUEST FOR TELEPHONIC OR IN PERSON CONFERENCE

Applicant requests that should the Examiner believe that all pending claims are not allowable, absent minor corrections that could be made by Examiner's Amendment during a telephone call with Applicant's Attorney, that a telephonic or in person interview be scheduled and held PRIOR to the Examiner issuing another office action, to allow Applicant

Serial No.: 09/774,351
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and his representative to discuss the pending claims and prior art with the Examiner.

Applicant reminds the Examiner that a product built in accordance with the pending claims has previously been submitted to the Examiner for her use in understanding the invention and the claims.

Respectfully submitted,

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